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1 David N. Chandler, Sr.
                            SBN 60780
   David N. Chandler, Jr.
                            SBN 235427
   DAVID N. CHANDLER, p.c.
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   Santa Rosa, CA
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4
   Attorneys for Debtors
5
                     UNITED STATES BANKRUPTCY COURT
6
                     NORTHERN DISTRICT OF CALIFORNIA
7
   IN RE:
                                     CASE No. 09-12892
8
                                      CHAPTER 11
9
   BETH WAYNE, and
   DAVID R. WAYNE,
                                     MOTION TO DETERMINE SECURED
10
                                      STATUS; DECLARATION OF BETH
        DEBTORS
                                      WAYNE; MEMORANDUM OF POINTS
11
                                      AND AUTHORITIES
                                             February 3, 2010
                                     Date:
12
                                      Time:
                                             9:00 a.m.
                                      Place: 5<sup>th</sup> and H Streets
13
                                             Eureka, CA
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        TO: HONORABLE ALAN JAROSLOVSKY, UNITED STATES BANKRUPTCY JUDGE:
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        BETH WAYNE AND DAVID R. WAYNE, Debtors herein, hereby move the
16 above entitled Court for an Order Determining the Secured Status of
   the allowed claim of Bank of America (137 14th St., Eureka, CA)
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   pursuant to Section 506 of the Code and the terms of the Chapter 11
19 ||Plan.
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        Said Motion is made on the grounds that the value of the
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  collateral is less than the allowed claim of such holder and that
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   the claim is secured as to the extent of the value of said
   collateral. Said allowed claim is unsecured as to the balance.
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        Said Motion is based hereon, on the appended Declaration of
25 Beth Wayne and on the Memorandum of Points and Authorities appended
26 hereto.
27 Dated:
             1/6/10
                                       DAVID N. CHANDLER, p.c.
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                                       By: /s/ David N. Chandler
                                       DAVID N. CHANDLER,
                                       Attorney for Debtors
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DECLARATION OF BETH WAYNE

- I, BETH WAYNE, declare and say:
- 1. That if called as a witness, I am competent to testify to the within matters from my own knowledge.
- 2. I am the Debtor in the above captioned matter and have an opinion of value of the subject real property based upon my ownership thereof.
- 8 3. The real property located at 137 14th St., Eureka, CA is 9 real property owned by my husband and me consisting of a single 10 family residence.
- 4. I am self employed as a real estate sales agent in Humboldt County, California.
- 5. Said real property has a current market value of \$265,000 in my opinion.
- 6. Based upon such value the allowed secured claim of claimant is \$265,000 and unsecured as to the balance.

Executed under penalty of perjury this 6^{TH} day of January, 2010 at Eureka, California.

/s/ Beth Wayne
Beth Wayne, Debtor

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MEMORANDUM OF POINTS AND AUTHORITIES

- 1. An allowed claim of a creditor secured by a lien on property in which the estate has an interest is secured to the extent of the value of such creditor's interest in the estate's interest in such property. 11 U.S.C. Section 506(a)(1).
- 27 2. To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void.

1 Section 506(d). 2 Section 506(a) bifurcates a debt into secured and unsecured components. The secured component is the secured debt. 3 <u>In re Glenn</u>, 786 F.2d 1144 (9th Cir. 1986). 4 5 The Chapter 11 Plan provides that the claim of Bank of 4. 6 America will be the subject of a Motion to Determine Secured Status. 7 5. is respectfully submitted that the value of the collateral which is collateral for the claimholder is as set forth 8 9 herein and that the claimant's allowable claim is wholly unsecured. 10 It is submitted that the collateral be valued as herein 11 provided and that the secured component of the claim be determined. Dated: 12 1/6/10 Respectfully submitted, 13 DAVID N. CHANDLER, p.c. 14 15 By: /s/ David N. Chandler DAVID N. CHANDLER, 16 Attorney for Debtors 17 18 19 20 21 22 23 24 25 26 27 28